

# GREEN EGGS AND SPAM: HOW TO MANAGE AND CONTROL UNSOLICITED E-MAIL

By Jim Robinson

It is estimated that 36 percent of all e-mail sent on a given day consists of unsolicited e-mail, otherwise known as "spam." Spam is defined in California Business and Professions Code §17538.4 as "unsolicited e-mail documents consisting of advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit" when the documents (a) are addressed to recipients who do not have existing business or personal relationships with the initiator, and (b) were not sent at the request of or with the consent of the recipient, B&P 17538.4(e). Use of the term "spam" arose out of a skit by the British comedy troupe Monty Python, in which a waitress can offer a patron no single menu item that does not include the luncheon meat "Spam." Hormel Food Corporation, the maker of the food product Spam, has dropped any defensiveness, and now celebrates the use of the term, *Ferguson v. Friendfinders* (2002) 94 Cal.App.4th 1255.

On the low end, unsolicited e-mail is simply annoying. On the high side, spam is expensive to eliminate, and those costs are usually passed onto the consumer. Because spam is usually sent to many recipients at one time at little or no costs to the sender, Internet Service Providers (ISP) incur significant business-related costs accommodating bulk mail advertising and answering consumer complaints. Recipients of spam expend resources to sort, read and discard unwanted e-mail. If the individual undertakes this exercise at work, employers suffer the financial consequences of the wasted time. Paul Graham, author of *A Plan for Spam* estimates that five man-weeks are wasted for each million recipients who spend just one second to delete an unsolicited e-mail.

The financial harm caused by the proliferation of unsolicited e-mail has been exacerbated by the use of deceptive tactics, which are used to disguise the sender and the nature of the message. By disguising the nature and origin of their messages, spammers evade attempts to filter out their messages by ISPs. ISPs incur additional costs attempting to return messages to nonexistent addresses or otherwise dispose of undeliverable messages. Again, the ISP defrays the cost by passing it onto the consumer.

## How do they get my e-mail address?

If your e-mail address has ever been on a web page, web-based bulletin board, or other "usenet newsgroup," it is available to others. Even if you have never posted your e-mail address anywhere on the web, it is still possible for you to get spam. Spammers often use common names with popular domain names (such as bob@aol.com) to send out e-mail. List merchants can then gather those names that do not bounce back, and sell them to other spammers.

## What is required to send unsolicited e-mail?

In much the same way that retailers and businesses use U.S. mail to send potential customers catalogs and advertisements, many businesses are using e-mail messages as a direct marketing tool. It is not illegal to send an unsolicited commercial e-mail. Many states, including California, have adopted their own laws to control the use of unsolicited e-mail, and there is pending federal legislation on the subject. For a comprehensive overview of state laws on unsolicited e-mail and proposed federal legislation, visit [www.spamlaws.com](http://www.spamlaws.com).

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**Jim Robinson**



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Under California legislation approved in September 1998, unsolicited commercial e-mail messages must contain a label (“ADV:” or “ADV: ADLT” if it is an adult advertisement) at the beginning of the subject line, as well as opt-out instructions or a toll free phone number to notify the sender not to e-mail any further unsolicited documents, Business and Professions Code §17538.4. The law applies to e-mail that is delivered to a California resident via a provider’s facilities located in California, B&P §17538.4(d). A provider may sue a sender of unsolicited commercial e-mail for violating the provider’s policies if the sender has actual notice of such policies, (B&P §17538.4(f)(1). Furthermore, civil penalties (including jail time) can be levied against someone who knowingly sends an e-mail that causes damage to the recipient’s computer or data, California Penal Code §502.

### **What can you do (and should not do) about spam**

State and federal laws are only “local ordinances” when it comes to regulating spam. Given the global nature of the Internet, spam can originate from any country. In fact, the Internet Fraud Complaint Center (a partnership between the National White Collar Crime Center and the F.B.I.) tracked Internet fraud in the U.S., including e-mail scams, originating from Nigeria, Romania, South Africa and Australia among many other countries.

### **Don’t buy**

The only true way to get rid of spam once and for all is for all recipients to stop buying what spammers are selling. Spammers are businessmen. They send spam because it works, even though the response rate is abominably low (at best 15 per million compared to 3000 per million for a catalog mailing). Alas, some people just can’t pass up the “golden opportunity” to cut their mortgage payments in half, increase their sex life with a magic pill, or get a college degree with a click of a mouse. Thus, unsolicited e-mail will continue as long as there is a credulous audience for the spammer’s message.

### **Discard, don’t respond**

Many spammers act like they are complying with unsolicited e-mail laws by including instructions on how to “opt out” of their mailing list. Unfortunately, many senders include these instructions in order to confirm that they have a working e-mail address, not to remove you from their mailings. As such, many dishonest companies treat the “opt-out” button as an “opt-in” button. These companies can then sell your valid e-mail address to other spammers. Unless you are unsubscribing from a mail distribution list where you know the message sender, the best practice is to discard the unsolicited message without responding.

### **Protect your primary e-mail address**

It is a good practice to guard your e-mail address as you would your phone number. Unless there is a specific reason to give out your main e-mail address to someone other than those you know, consider setting up a free e-mail account through a service such as Yahoo ([www.yahoo.com](http://www.yahoo.com)) or Hotmail ([www.hotmail.com](http://www.hotmail.com)). Many mail programs, such as Microsoft Outlook, also allow you to set up a second e-mail account. This second e-mail address can then be used if you post messages or when you want to receive information from a company.

### **Know how and to whom to complain**

Many argue that complaining about spamming does not help. Randy Cassingham, author of *Getting Rid of Spam...and Other E-mail Pests*, points out that spam victims have complained a lot, and for a long time, but the complaints really don’t do anything to stop spam. Worse, because spammers are good at cloaking their e-mail address, it is difficult to track down the real culprit.

If you want to complain, contact the e-mail server’s administrator. Before an e-mail ever reaches your Inbox, each piece of e-mail must be sent from a “server” run by an ISP. Most server administrators (such as Yahoo or Hotmail) are responsible, and want to know when their machines are being used for spamming. To contact the server’s administrator, first determining the domain of the server. The domain is found after the “@” sign. For example, an e-mail from [buyme@yahoo.com](mailto:buyme@yahoo.com) has a

domain of “yahoo.com.” Once you know the domain, e-mail the entire message and your complaint to “abuse@” that domain. For example, if you received a spam from buythis@hotmail.com, you would send the e-mail and complaint to abuse@hotmail.com.

The Direct Marketing Association (DMA) also offers a free service, similar to its program for telephone and postal mailing solicitations, enabling consumers to opt out of unsolicited e-mail. DMA members are required to purge from their mailing lists all e-mail addresses of consumers who have requested to be removed. More information is available from the DMA at [www.the-dma.org](http://www.the-dma.org).

### Consider filtering software

There are a variety of free software programs that you can use to filter spam. Links to these free software sites can be found at <http://freeware.intrastar.net/email-tools.htm>. Many of these software programs such as SPAM PAL ([www.spampal.org](http://www.spampal.org)) allow you to set up “white lists” to allow you to receive e-mail only from known senders, and/or “tag” those with a special header that are unknown. Microsoft Outlook can also be set up to search for commonly used phrases in e-mail

messages and automatically move messages containing these phrases from your Inbox to either a junk e-mail folder created by Outlook, to your Deleted Items folder, or to any other folder you specify. You can also use Outlook to add e-mail senders to the junk mail list and then block those senders.

### Spam sandwiched

Most people hate spam worse than eating green eggs. However, as long as people continue to respond to unsolicited e-mail, spamming will continue. Although it is unlikely spam will be eliminated anytime soon, by guarding your primary e-mail account and using free filtering software, you can do a more effective job of managing unsolicited e-mail.

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## QUESTIONS: MANAGING & CONTROLLING UNSOLICITED EMAIL



1. It is estimated that 36 percent of all e-mail sent on a given day consists of unsolicited e-mail.

**True False**

2. "Spam" is a term used for unsolicited e-mail that arose out of the use of the term in a Monty Python skit.

**True False**

3. In California, the definition of "unsolicited e-mail" does not include e-mail advertising for one's services.

**True False**

4. Under California Business and Professions Code 17538.4(e), if a person requests and is sent an e-mail advertisement by a company with whom he has a prior business relationship, that e-mail is not considered "spam."

**True False**

5. An e-mail offering to extend credit to someone is never considered an unsolicited e-mail in California.

**True False**

6. Under California law, the definition of unsolicited e-mail does not include e-mail regarding the lease of realty.

**True False**

7. It is estimated that five man-weeks are wasted for each million recipients who spend just one second to delete an unsolicited e-mail.

**True False**

8. It is possible for a person to receive unsolicited e-mail even if their e-mail address has never been listed anywhere on the Internet.

**True False**

9. It is illegal to send unsolicited commercial e-mail.

**True False**

10. There is no current pending federal legislation on the use of unsolicited e-mail.

**True False**

11. Under California legislation, it is not necessary for unsolicited commercial e-mail sent within California to contain opt-out instructions or a toll free phone number to notify the sender to stop sending further unsolicited e-mails.

**True False**

12. Pursuant to the California Business and Professions Code, unsolicited commercial e-mail sent within California must contain the label "ADV:" (or "ADV: ADLT" if it is an adult advertisement) in the subject line.

**True False**

13. Business and Professions Code §17538.4(d) applies to e-mail that is delivered to a non-California resident from a facility outside of California.

**True False**

*questions continued on page 9*

## QUESTIONS: MANAGING & CONTROLLING UNSOLICITED EMAIL

14. Under California law, a person who knowingly sends an e-mail that causes damage to the recipient's computer or data can be subject to civil penalties and/or jail time.

**True**

**False**

15. An Internet Service Provider may sue a sender of unsolicited commercial e-mail for violating the provider's policies if the sender has actual notice of the provider's policies.

**True**

**False**

16. The Internet Fraud Complaint Center is a partnership between the National White Collar Crime Center and the F.B.I.

**True**

**False**

17. Senders of unsolicited e-mail often "cloak" their e-mail address to make it difficult to track the identity of the sender.

**True**

**False**

18. Before an e-mail reaches a person's inbox, each piece of e-mail must be sent from a "server."

**True**

**False**

19. Members of the Direct Marketing Association are not required to purge from their mailing lists all e-mail addresses of consumers who have requested to be removed.

**True**

**False**

20. Using e-mail filtering software to set up a "white list" allows a person to receive e-mail only from known senders, and/or tag those with a special header that are unknown.

**True**

**False**



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